BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of The Application of James and Denise Haston for Change of Electric Supplier.	)))	**File No. EO-2020-0163**

THE CITY OF MONETT, MISSOURI'S MOTION TO DISMISS AND RESPONSE TO THE APPLICATION OF JAMES AND DENISE HASTON FOR CHANGE OF ELECTRIC SUPPLIER

COMES NOW the City of Monett, Missouri (the "City"), by and through its Attorney, Healy Law Offices, LLC, and for its Motion to Dismiss and Response to the Application of James and Denise Haston for Change of Electric Supplier ("Application"), states to the Commission as follows:

Introduction

On December 11, 2019, James and Denise Haston filed a verified Application with the Missouri Public Service Commission requesting a change of their electric supplier from Ozark Electric Cooperative, Inc. ("Ozark") to the City.

On December 12, 2019, the Commission issued its order adding Ozark and the City as parties to the proceeding and directed them to file responses to the Application by January 13.

As will be discussed more fully below, the Application should be dismissed because no change of electric supplier is necessary, as the plain language of the relevant statute provides the City exclusive authority to serve the Haston property.

Facts

1. The City is a city of the third class with a commission form of government. The City operates its own municipal electric utility and supplies its inhabitants with electric power pursuant to § 91.010, RSMo.[1]

[1] All statutory references are to the Revised Statutes of Missouri (2016), unless otherwise noted.

2. Ozark is a rural electric cooperative rendering electric service to rural areas in Southwestern Missouri, particularly portions of Lawrence, Barry, Christian, Dade, Greene, Jasper, Newton, Polk and Stone counties, pursuant to § 394.080.

3. James and Denise Haston are owners of property located at 603 Farm Road 2240, Monett, Missouri (the "property").

4. The property has not been occupied in over thirty (30) years.

5. The annexation of the property into the City was approved by the City Council on August 20, 2019, and recorded in Barry County on September 6, 2019.

6. The property was voluntarily annexed into the City at Mr. and Mrs. Haston's request in order to obtain electric, sewer, trash disposal, police, and fire services.

7. Mr. and Mrs. Haston are constructing a new residence on the property and it is under construction. The City began supplying electric service to the new structure on October 22, 2019.

8. There is a well house and well on the property that existed prior to the annexation.

9. Sometime in the past, and more than ninety days prior to the effective date of the annexation, Ozark provided electric service to the well and well house. However, at this time, the well and well house are not electrified. To the City's knowledge, it has been at least ten years since Ozark has provided electric service to the well and well house, and could be even longer than that.

10. It is not yet determined whether the well is viable or whether a new well will need to be drilled. The City is not providing electric service to the well and well house at this time.

11. To the City's knowledge, Mr. and Mrs. Haston have not purchased any electric service for the well and well house from Ozark at any time that they have owned the property, either before or after the annexation.

12. Ozark contacted the City and stated its opinion that it (Ozark) has the legal right to serve the well and well house so long as those structures exist, and informed Mr. and Mrs. Haston that they must file for a change of electric supplier if they want the City to provide electric service to the well and well house. Ozark acknowledges that the City has the legal right to serve the new residence on the property.

Motion to Dismiss

As a preliminary matter, the Commission should dismiss the Application because it does not invoke Commission jurisdiction.

§ 393.315.2 provides that if a rural electric cooperative has a right to continue to serve an existing structure in an annexed area, then the only way another electric supplier can provide electric service to that structure is for the Commission to approve a change in electric supplier. However, it follows that if a rural electric cooperative lacks the legal right to provide electric service to an existing structure, then the Commission lacks jurisdiction to approve a change in electric supplier.

As discussed more fully below, the facts in this case show that because the well and well house did not receive permanent electric service from Ozark within ninety days prior to the effective date of the annexation as required by § 386.800.2, it is the City, not Ozark, that has the legal right to provide service to those structures.

Based on the facts and the law, the City already has the exclusive legal right to provide electric service to the entire property, and neither Mr. and Mrs. Haston nor the City need the

Commission's approval for a change in electric supplier. Accordingly, the Application fails to state a claim on which relief can be granted, and it should be dismissed.

Response and Analysis

The only issue in this case is which electric supplier has the authority to provide electric service to the well and well house—Ozark or the City. There are several statues that pertain to the powers and authority of municipally owned electric utilities and rural electric cooperatives to provide electric service, and those statutes clearly give the City authority to provide electric service to all structures on the property, including the well and well house.

It appears that Ozark is relying on § 394.315, for its position that it is entitled to serve the well and well house. That section provides:

> 1. As used in this section, the following terms mean…
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>   (2) "Structure" or "structures", an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus at which retail electric energy is being delivered through a metering device which is located on or adjacent to the structure and connected to the lines of an electrical supplier. Such terms shall include any contiguous or adjacent additions to or expansions of a particular structure. Nothing in this section shall be construed to confer any right on a rural electric cooperative to serve new structures on a particular tract of land because it was serving an existing structure on that tract.
>
> 2. Once a rural electric cooperative, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a territorial agreement approved under section 394.312.

Ozark's position seems to be that the well and well house are existing structures as defined under § 394.315.1(2), so it has the right to provide service to them so long as they exist. However, § 394.315.2 acknowledges that any such right of Ozark to provide service to the well and well house is limited, "pursuant to section 386.800." § 386.800 governs municipally owned electric utilities' service territories. Importantly, the plain language of that statute sets out what municipal utilities can and cannot serve after an annexation. Subsection 2 provides:

> Any municipally owned electric utility may extend, pursuant to lawful annexation, <u>its service territory to include any structure located within a newly annexed area which has not received permanent service from another supplier within ninety days prior to the effective date of the annexation.</u> (emphasis added).

The emphasized language from § 386.800.2 is determinative here, because facts of this case show that the well and well house were not receiving permanent service from Ozark within ninety days prior to the effective date of the City's annexation of the Haston property. Because of this, neither § 394.315.2, nor any other law, provide a basis for Ozark to provide electric service to the well and well house.

The Supreme Court of Missouri faced a similar situation in *Farmers' Elec. Coop. v. Missouri Dep't of Corrections*, 977 S.W.2d 266 (Mo. banc 1998). There, in 1986, Farmers' and the Department entered into a twenty-year contract for the purchase and sale of all the electricity that the department might need on a tract of land located in DeKalb County, Missouri. At the time that the Department contracted with Farmers', the land described in the contract was not within the city boundaries of Cameron, Missouri. In 1988, the Western Missouri Correctional Center ("WMCC") was built on the tract of land, and Farmers' provided electric service to the facility pursuant to the contract.[2]

In 1994, the Department's tract of land was voluntarily annexed into the city of Cameron. In 1995, the Department decided to build an additional facility, Crossroads Correctional Center ("Crossroads"), on the property. The Department chose the City of Cameron to provide electric service for the new facility. Farmers' sued the Department for breach of the 1986 contract. The

[2] *Id*. at 267-68.

trial court found for the Department, holding that Crossroads was a new structure within the meaning of § 394.315.1(2), and only the city could lawfully supply electricity to Crossroads under the statute. The trial court also concluded that the contract with the Department was illegal. Farmers' appealed.[3]

Farmers' asserted two points on appeal. On the first point, Farmers' contended that § 394.080 was the only controlling stature in the case, and asserted that even if Crossroads was a new structure in accordance with § 394.315.1(2), Farmers still had the authority to continue selling electricity to its member, the Department, in a formerly rural area pursuant to § 394.080.1(4).[4]

The Supreme Court disagreed, saying that § 394.080 had to be read in conjunction with other statutes involving related subject matter. The Court referenced § 394.315.1 (2) ("nothing in this section shall be construed to confer any right on a rural electric cooperative to serve new structures on a particular tract of land because it was serving an existing structure on that tract."), and concluded that Farmers could not provide service to Crossroads merely because it had the

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[3] *Id*. at 268-69.

[4] *Id*. at 270. It is important to note that all of the powers enumerated for a rural electric cooperative under § 394.080.1(4) are expressly limited by § 386.800. § 394.080.1(4) provides: "Except as provided in section 386.800, to generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten percent of the number of its members; provided, however, that where a cooperative has been transmitting, distributing, selling, supplying or disposing of electric energy in a rural area which, by reason of increase in its population, its inclusion in a city, town or village, or by reason of any other circumstance ceases to be a rural area, such cooperative shall have the power to continue to transmit, distribute, sell, supply or dispose of electric energy therein until such time as the municipality, or the holder of a franchise to furnish electric energy in such municipality, may purchase the physical property of such cooperative located within the boundaries of the municipality, pursuant to law, or until such time as the municipality may grant a franchise in the manner provided by law to a privately owned public utility to distribute electric power within the municipality and such privately owned public utility shall purchase the physical property of such cooperative located within the boundaries of the municipality. In case any of the parties to such purchase, as herein provided, cannot agree upon the fair and reasonable price to be paid for the physical property of such cooperative within the municipality, or if either party refuses to negotiate for the sale of such property upon the request of the other, the fair and reasonable value of such property for such purchase shall be fixed by the public service commission upon application of any one or more of the interested parties[.]" (emphasis added).

authority under § 394.080.1(4) to continue providing service to the structures it was serving before the land was annexed.[5]

Importantly, the Court then proceeded to reject the argument that § 394.315.2 provided authority for Farmers' to provide electric service to Crossroads, and concluded that the city had the authority to provide service. The Court concluded:

> The city, rather than Farmers', is the lawful supplier of electricity to Crossroads pursuant to sections 91.010 and 386.800.2. Section 91.010 provides that a municipality has the authority to operate electric power plants and to supply its inhabitants with electric power. Pursuant to section 386.800.2, a municipally-owned electric utility may extend, pursuant to lawful annexation, its service territory to include any structure located in a newly annexed area that has not received permanent service from another supplier within ninety days prior to the effective date of the annexation. Under the plain meaning of the language in section 386.800.2, the city is entitled to provide electric service to Crossroads.[6]

While the facts in that case vary slightly from those in this case, the result is exactly the same. Now that the property has been annexed into the city limits, under the plain language of § 386.800.2, Ozark no longer has a legal right to serve the well and well house because those structures had not received permanent service from Ozark within ninety days prior to the effective date of the annexation. This means that the City has the exclusive right under that statute to provide electric service to the well and well house. A change in electric supplier is not necessary or required under the circumstances.

WHEREFORE, for the reasons set forth above, the City prays that this Commission dismiss the Application for failure to state a claim on which relief can be granted; and for such other and further relief as the Court deems just and proper under the premises.

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[5] *Id*. at 270-71.
[6] *Id*. at 271. (Emphasis added.) On the second point of appeal (breach of contract), the Court went on to hold that the Department had breached the 1986 contract and remanded with directions to enter judgment in favor of Farmers' on the breach of contract claim and to determine the amount of damages to Farmers' resulting from the breach of contract. *Id*.

Respectfully submitted,

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ATTORNEY FOR THE CITY OF
MONETT, MISSOURI

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties on the official service list for this case on this 13th day of January, 2020.

Terry M. Jarrett

STATE OF MISSOURI)
) ss.
COUNTY OF _________)

VERIFICATION

Skip Schaller, upon oath, states the following:

1. My name is Skip Schaller. I am the Superintendent of Utilities for the City of Monett, Missouri.

2. I have read the foregoing "*The City of Monett, Missouri's Motion to Dismiss and Response to the Application of James and Denise Haston for Change of Electric Supplier*," I am familiar with its contents, and the matters set forth therein are true to the best of my knowledge, information and belief.

Skip Schaller

SWORN TO BEFORE ME, the undersigned Notary Public, on this the 10 day of January, 2020.

Notary Public

My Commission Expires: 09-11-21

LISA CRAWFORD
09/11/2021
NOTARY PUBLIC NOTARY SEAL
#13497619
Lawrence County
STATE OF MISSOURI